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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DENNIS R. HOPKINS,

9 Plaintiff,

10 v.

11 JEFF PLANICH, et al.,

12 Defendants.

No. C09-5405 FDB

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**ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
ACTION FOR FAILURE TO STATE A
CLAIM**

This matter comes before the Court on the recommendation of the Magistrate Judge that Plaintiff's civil rights complaint be dismissed for failure to state a claim. As detailed by the Report and Recommendation Plaintiff was carefully instructed as to the elements of a 42 U.S.C. § 1983 action and given an opportunity to amend his complaint to correct the deficiencies. Nonetheless, Plaintiff's amended complaint continues to be deficient, i.e. it alleges no facts showing that the private entity defendants may be considered to have acted under color of state law.

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation.
- (2) Plaintiff's First Amended Complaint [Dkt. 9] is **dismissed without prejudice**,
and the dismissal counts as a strike pursuant to 28 U.S.C. 1915 (g). (3).

ORDER ADOPTING REPORT AND RECOMMENDATION- 1

The Clerk is directed to send copies of this Order to plaintiff, and to the Hon.

Karen L. Strombom.

DATED this 9th day of November, 2009.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE